

SPECIAL MEETING  
May 23, 2005

The Special Meeting of the Annapolis City Council was held on May 23, 2005 in the Council Chamber. Mayor Moyer called the meeting to order at 7:00 p.m.

Present on Roll Call: Mayor Moyer, Aldermen Hammond, Tolliver, Kelley, Cordle, Fox, Cohen, Alderwomen Hoyle, Carter

Staff Present: City Attorney Spencer

PUBLIC HEARINGS

ORDINANCES

**O-20-05                    For the purpose of establishing a Homestead Credit Percentage of one hundred four percent (104%) in the City of Annapolis; and matters generally relating to said Homestead Credit Percentage.**

Spoke in favor of the ordinance:

- Tony Evans, 3 Constitution Square, Annapolis, Maryland 21401
- Delegate Herb McMillan, representing District 30, 417 Fox Hollow Lane, Annapolis, Maryland 21401
- Julie Stankivic, 906 Primrose Road, #204, Annapolis, Maryland 21403
- Cliff Meyers, 8 Acton Place, Annapolis, Maryland 21401
- Barbara MacLeod, 303 McDonough Road, Annapolis, Maryland 21401
- Richard Israel, 61 Shaw Street, Annapolis, Maryland 21401, spoke in favor of reduction of cap after fiscal impact assessment.
- Doug Burkhardt, 125 Monticello Avenue, Annapolis, Maryland 21401

Spoke in opposition to the ordinance:

- Jim Lowthers, president of UFCW Local 400, representing Annapolis City Police, 266 Cape St. John Road, Annapolis, Maryland 21401
- Bob Burdon, representing The Annapolis & Anne Arundel County Chamber of Commerce, 49 Old Solomans Island Road # 204, Annapolis, Maryland 21401
- George Gisin, representing AFSCME Local 3406-3162, 58 Foxwell Bend, Glen Burnie, Maryland 21061
- Chris Ledoux, 215 Severn Avenue, Annapolis, Maryland 21403

No one else from the general public spoke in favor of or in opposition to the ordinance.

Mayor Moyer declared the public hearing closed.

**LEGISLATION**

**O-37-04                    For the purpose of amending the existing zoning classification for the split-zoned parcels located in the eastern quadrant of the intersection of Tyler Avenue and Forest Drive from its current zoning of R2, Single Family Residence District, R3, General Residence District, and B2, Community Shopping District; to all one zoning district of B2, Community Shopping District; and matters generally relating to said zoning map amendment.**

- Alderman Fox moved to adopt O-37-04 on second reading. Seconded.

The Rules and City Government Committee reported no action on O-37-04.

- Alderman Hammond moved to amend O-37-04 as follows:

**Amendment #2- Negative Finding** [The finding drafted below finds that neither a change in the character of the neighborhood of the property an/or a mistake in the existing zoning classification has occurred so that a rezoning from R2 and R3 to B2 is not warranted. Amendments #1 and #2 are mutually exclusive. Only one or the other may be adopted, not both.]

On page 2, strike lines 13 through 39 and substitute the following:

**"FINDINGS BY THE CITY COUNCIL:**

The City Council finds that since there has not been a change in the character of the neighborhood of the property and/or a mistake in the existing zoning classification, the proposed rezoning from R2 Single Family Residence District to B2 Community Shopping District is not warranted.

**SECTION I: BE IT ESTABLISHED AND ORDAINED BY THE ANNAPOLIS CITY COUNCIL** that the B2 Community Shopping District zoning classification is not approved for the Property as shown in the following Sigma Engineering, Inc. maps: Portion of Tax Map Showing Existing Zoning Classification, Portion of Tax Map Showing Proposing Zoning Classification, Topographic Map Showing Existing Zoning Classifications, and Topographic Map Showing Proposed Zoning Classifications. Copies of these maps are attached hereto and incorporated herein by reference."

Seconded. A ROLL CALL vote was taken:

YEAS: Alderman Hammond, Tolliver, Kelly, Cordle, Cohen  
NAYS: Mayor Moyer, Alderman Fox, Alderwomen Hoyle, Carter  
CARRIED: 5-4

The main motion as amended CARRIED on voice vote.

- Alderman Hammond moved to adopt O-37-04 amended on third reading. Seconded. CARRIED on voice vote.

**O-38-04 For the purpose of amending the existing zoning classification for the property located at 1244 and 1248 Tyler Avenue from R2, Single Family Residence District, to B2, Community Shopping District; and matters generally relating to said zoning map amendment.**

- Alderman Fox moved to adopt O-38-04 on second reading. Seconded.

The Rules and City Government Committee reported favorably on O-38-04.

- Alderman Hammond moved to amend O-38-04 as follows:

**Amendment #2- Negative Finding** [The finding drafted below finds that neither a change in the character of the neighborhood of the property an/or a mistake in the existing zoning classification has occurred so that a rezoning from R2, to B2 is not warranted. . Amendments #1 and #2 are mutually exclusive. Only one or the other may be adopted, not both.]

On page 2, strike lines 13 through 39 and substitute the following:

**"FINDINGS BY THE CITY COUNCIL:**

The City Council finds that since there has not been a change in the character of the neighborhood of the property and/or a mistake in the existing zoning classification,

the proposed rezoning from R2 Single Family Residence District to B2 Community Shopping District is not warranted.

**SECTION I: BE IT ESTABLISHED AND ORDAINED BY THE ANNAPOLIS CITY COUNCIL** that the proposed B2 Community Shopping District zoning classification is not approved for the Property as shown in the following Sigma Engineering, Inc. maps: Portion of Tax Map Showing Existing Zoning Classification, Portion of Tax Map Showing Proposing Zoning Classification, Topographic Map Showing Existing Zoning Classifications, and Topographic Map Showing Proposed Zoning Classifications, is not approved. Copies of these maps are attached hereto and incorporated herein by reference."

Seconded. A ROLL CALL vote was taken:

YEAS: Alderman Hammond, Tolliver, Cordle, Cohen  
NAYS: Mayor Moyer, Alderwomen Hoyle, Carter, Alderman Fox,  
Kelly  
DEFEATED: 5-4

- Alderman Fox moved to amend O-38-04 as follows:

**Amendment #1 - Positive Finding** [The Annotated Code of Maryland requires that for the local legislative body to change the zoning classification, it must make a finding that there was either a "...substantial change in the character of the neighborhood where the property is located; or A mistake in the existing zoning classification." The positive finding below concludes that there was a substantial change in the character of the neighborhood. According to City Code, the City Council may not act upon the application until it has received a written report and recommendation of the Planning Commission and the Department of Planning and Zoning. Those written reports and recommendations were submitted on October 21, 2004, and August 25, 2004, respectively, so the Council may now act either positively or negatively.]

On page 2, strike lines 13 through 30 and substitute the following:

**"FINDINGS BY THE CITY COUNCIL:**

A. The parcels of land which are the subject of this rezoning are located to the northwest of the intersection of Tyler Avenue and Forest Drive and are adjacent to the Annapolis Seafood Market. The property is developed with two residential dwellings. The applicants are the owners of the property and seek to change the zoning classification from R2 to B2.

B. The City Council finds that there has been a change in the character of the neighborhood of the property sufficient to warrant a rezoning.

C. The rezoning of the property is in conformance with the laws of the State of Maryland and of the City of Annapolis, and, as required under Section 21.84.060 B of the Code of the City of Annapolis, the City Council finds the following:

1. Population Change

According to data provided by the Applicant, the City of Annapolis is expected to grow slightly over the next decade. In 1990, the City's population was 33,187; it rose to 35,207 in 2000. The projected population in 2010 is 36,361. In 2015, the population is projected to be 35,264. The trend is estimated to continue, with a projected population of 34,078 in the City in the year 2020.

2. Availability of Public Facilities

Electric utilities, public water service, public sewer service, and all other municipal services are currently available to the subject Property. The Property is also adequately served by an existing road infrastructure. No public school facilities are adversely implicated in this application.

3. Present and Future Transportation Patterns

Forest Drive is a heavily trafficked road, but the shopping and retail uses permitted in the B2 District would serve the needs of those living near and traveling along the busy route. Neighborhood commercial retail uses should result in a reduction in the number of vehicle trips traveling the full length of Forest Drive.

4. Compatibility with Existing and Proposed Development

For many years, commercial uses have abutted residential properties in the vicinity of the property, which relationship supports the presumption of compatibility. The rezoning of the property and the expansion of the B2 District will more clearly delineate the separation of commercial and residential uses in the neighborhood and will provide for a more rational pattern of zoning districts in the area. The rezoning will allow for an opportunity to increase and expand landscape buffers and to further protect the adjacent residential neighborhood.

5. Recommendation of the Planning Commission

Prior to the City Council's public hearing on the applicant's rezoning request, the Planning Commission held a public hearing and considered the requested rezoning. The Planning Commission recommended against the rezoning request, and the City Council considered the Planning Commission's findings and recommendation during its deliberation on the request.

6. Compliance with the Comprehensive Plan

The Comprehensive Plan identifies the subject area as a commercial center on the neighborhoods plan at Figure 1; as a local retail place of employment on an existing major corridor on the Economy Plan at Figure 2; as commercial on the existing Generalized Land Use Plan at Figure 7; as B2 community shopping on the City of Annapolis Zoning Map at Figure 8; as commercial on the Future Land Use Plan at Figure 9; as located on a major arterial on the Long Term Roadway Plan at Figure 11; as part of an existing transit route on the Transit and Bicycle Routes Plan at Figure 12; as devoid of environmental features as indicated on the Sensitive Area Plan at Figure 15; and as located on an existing major corridor on the Urban Design Framework Plan found on Figure 16. Rezoning the property to the B2 District is consistent with each of these designations and promotes the Expanded Commercial Land Use Designation at Figure 9, which contains boundaries of an anticipated commercial node that encompass the property.

7. Change or Mistake to Warrant a Rezoning of the Property

In order for a governing body to approve an individual, or "piecemeal", rezoning request, it must find that there was a mistake in the original zoning classification assigned to the property or that there has been a change in the character of the neighborhood of the property sufficient to warrant a rezoning. A governing body may find that either change or mistake or both occurred in granting the request. The applicant argued, and the Council finds, that a change in the character of the neighborhood warrants the requested rezoning.

The applicant clearly delineated the "neighborhood", or the immediate environs surrounding the subject property, on graphic exhibits and in testimony at the Council's public hearing on the requested rezoning. The neighborhood is generally bounded by Hilltop Lane to the north, by Bay Ridge Avenue and the City's

jurisdictional boundary to the east and south, and by Harness Creek Road and various neighborhood streets to the west.

The property was originally zoned in 1970 and has not been comprehensively rezoned since that time. In the intervening thirty-five years, there have been significant changes in the neighborhood. Forest Drive, which runs by the property and through the neighborhood, has doubled in width from a two-lane street to a four-lane divided road. The traffic volume along Forest Drive has increased several times over since 1970, with vehicle trips increasing from a few thousand trips per day in 1970 to 32,000+ trips per day at present. There have also been numerous annexations within the neighborhood of the subject property, which resulted in the extension of public utilities throughout the neighborhood and an increase in population.

In 1981, a rezoning was approved in the neighborhood. What was then known as the Mt. Moriah church property was rezoned in Ordinance No. O-27-81, and the site is now developed with the Greystone Building. The Mt. Moriah rezoning was approved by the City Council after it determined that a substantial change in the character of the neighborhood warranted the rezoning from a residential district to a commercial district."

Seconded. A ROLL CALL vote was taken:

YEAS: Mayor Moyer, Alderwomen Hoyle, Carter, Alderman Kelly, Fox  
NAYS: Alderman Hammond, Tolliver, Cordle, Cohen  
CARRIED: 5-4

The main motion as amended CARRIED on voice vote.

A ROLL CALL vote was taken:

YEAS: Mayor Moyer, Alderwomen Hoyle, Carter, Alderman Kelly, Fox  
NAYS: Alderman Hammond, Tolliver, Cordle, Cohen  
CARRIED: 5-4

- Alderwoman Carter moved to adopt O-38-04 amended on third reading. Seconded. A ROLL CALL vote was taken:

YEAS: Mayor Moyer, Alderwomen Hoyle, Carter, Alderman Kelly, Fox  
NAYS: Alderman Hammond, Tolliver, Cordle, Cohen  
CARRIED: 5-4

**O-12-05 For the purpose of authorizing the lease of the MarketHouse to Dean & DeLuca Annapolis, Inc., a body corporate, for a certain period of time, subject to certain terms, provisions, and conditions, for the purpose of operating a full scale gourmet market and café; and all matters relating to said lease.**

- Alderman Fox moved to adopt O-12-05 on second reading. Seconded.

The Economic Matters Committee reported favorably with amendments on O-12-05.

- Alderman Kelly moved to amend O-12-05 as follows:

**Amendment 1**

*[To specify that the lease also applies to a certain area outside of the MarketHouse per se.]*

On page 3, in line 27 after "MarketHouse" insert "and that area on the exterior of the MarketHouse, including sidewalk area not to exceed the roof line as shown by the

dashed lines in Exhibit 1 (attached hereto)”

**Amendment 2**

*[To clarify that the terms of the RFP under which the proposed tenant bid and the MarketHouse policy provided in the City Code also govern the operations of MarketHouse tenant.]*

On page 3, in line 21, add:

“WHEREAS, City Code Section 7.28.020 and the Request for Proposals issued on June 22, 2004 and the subsequent addendum issued July 7, 2004, in reference to the Market House lease (hereinafter “RFP”) are hereby incorporated by reference and are set forth as the public policy of the City concerning operation of the Market House; and

WHEREAS, whenever the consent of the City is sought or exercised under this lease, it shall be understood and agreed that consent is reasonably denied or conditioned when the City determines it necessary or appropriate in order to implement a provision of the RFP or applicable law, including but without limitation, City Code Section 7.28.020.”

**Amendment 3** *[To again reference that the terms of the RFP under which the proposed tenant bid and the MarketHouse policy provided in the City Code also govern the operations of MarketHouse tenant.]*

On page 3, in line 22, after “in consideration of the” add, “ foregoing recitals,”

**Amendment 4** *[Operation of a café in the MarketHouse is not permitted.]*

On page 4, in line 7, strike “and café”

**Amendment 5** *[Catering is not permitted in this zone]*

On page 4, in line 18, strike “a catering business” and substitute “ delivery of prepared foods”

**Amendment 6** *[To reduce the time that deliveries may be made to the MarketHouse to mitigate potential traffic congestion.]*

On page 4, in line 37, strike “12:00 noon” and substitute “11 a.m.”

**Amendment 7** *[To clarify the minimum hours of operation Tenant may maintain]*

On page 4, in line 38, strike the entire sentence beginning with “Tenant anticipates that its initial hours of operation” and substitute “The Premises shall be open from 8:00 a.m. to 7 p.m. seven days a week excluding holidays”

On page 4, in line 41, strike “modify” and substitute “increase”

**Amendment 8** *[Tenant may not cease operations regardless if it pays rent.]*

On page 5, strike lines 1-4.

**Amendment 9** *[To retain the City’s continuing right to adopt new rules or legislation affecting the MarketHouse.]*

On page 11, beginning in line 31, strike “The City shall not” and all that follows through line 33

**Amendment 10** *[To again specify that the terms of the RFP under which the proposed tenant bid and the MarketHouse policy provided in the City Code also govern the operations of MarketHouse tenant]*

On page 15, in line 10 after “This lease” insert “and any documents incorporated by reference herein”

Seconded. CARRIED on voice vote.

The main motion as amended CARRIED on voice vote.

- Alderman Fox moved to adopt O-12-05 amended on third reading.  
Seconded. CARRIED on voice vote.

Upon motion duly made, seconded and adopted, the meeting was adjourned at 8:43 p.m.

Regina C. Watkins-Eldridge, CMC  
Deputy City Clerk